

FILE COPY

Office - Supreme Court, U. S.
FILED

AUG 15 1938

SUPREME COURT OF THE UNITED STATES

CHARLES EDMOND CHORLEY
CLERK

OCTOBER TERM, 1938

No. 276

**CARY D. LANDIS, INDIVIDUALLY AND AS ATTORNEY GENERAL
OF THE STATE OF FLORIDA, ET AL.,**

Appellants,

vs.

**GENE BUCK, INDIVIDUALLY AND AS PRESIDENT OF THE
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUB-
LISHERS, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.**

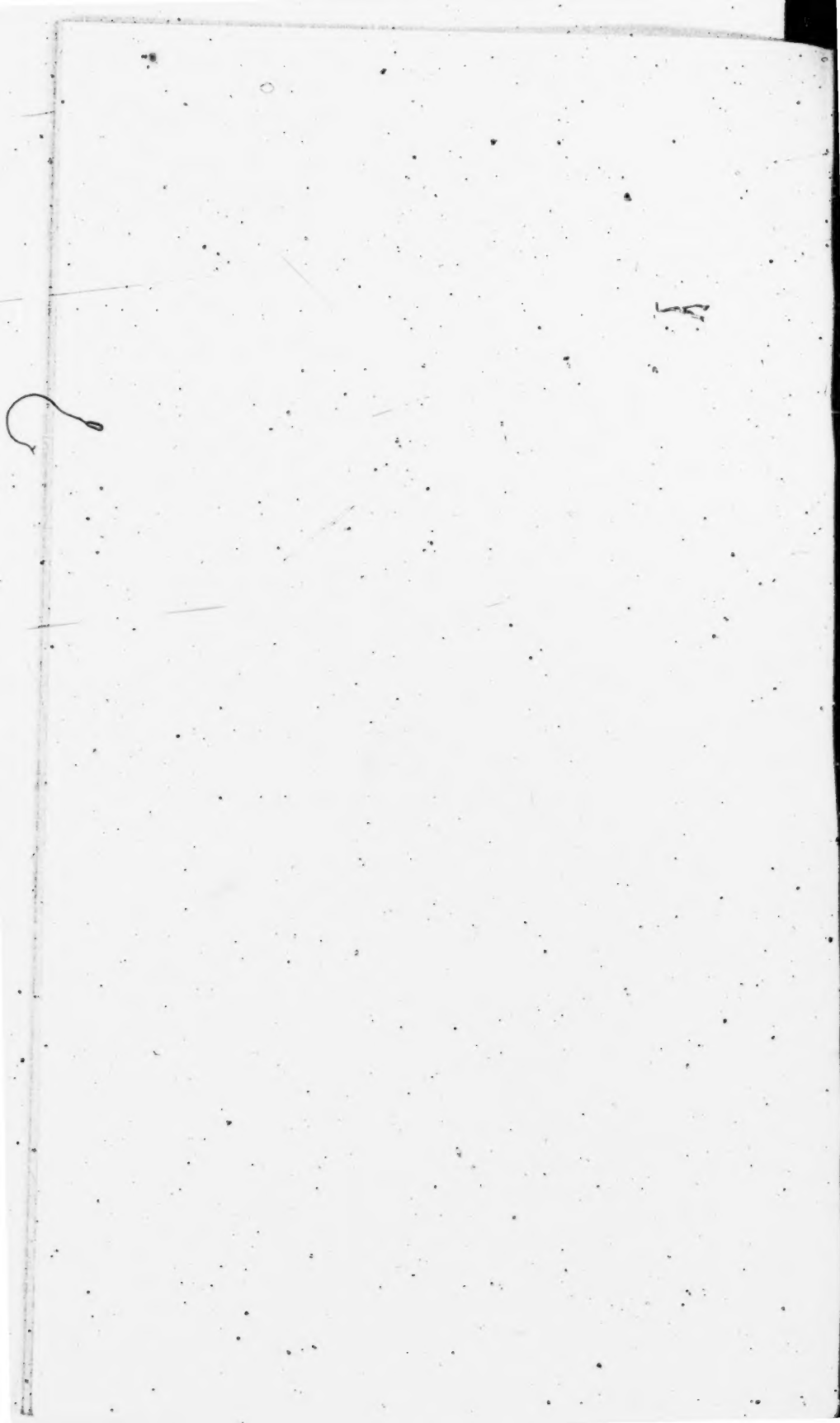
**MOTION OF APPELLANT STATE'S ATTORNEYS
TO VACATE DECREE AND DIRECT DISMISSAL
OF BILL OF COMPLAINT.**

TYRUS A. NORWOOD,
Assistant Attorney General of Florida;
 LUCIEN H. BOGGS,
 ANDREW W. BENNETT,
Counsel for Appellants, State's Attorneys.

INDEX.

SUBJECT INDEX.

	Page
Motion to vacate decree and direct dismissal of bill of complaint	1
Exhibit A. Suggestion of death	5
B. Motion to dismiss	6
C. Motion for leave to file supplemental bill	8
D. Special appearance and objections of George Couper Gibbs to being made party defendant	10
E. Objections of defendant State's attorneys to motion for leave to file supplemental bill	13
F. Order on motions	15
G. Senate Bill No. 679	16



SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1938

No. 276

**CARY D. LANDIS, INDIVIDUALLY AND AS ATTORNEY GENERAL
OF THE STATE OF FLORIDA, ET AL.,**

vs.

Appellants,

**GENE BUCK, INDIVIDUALLY AND AS PRESIDENT OF THE
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, ET AL.,**

Appellees.

**MOTION OF APPELLANT STATE'S ATTORNEYS
TO VACATE DECREE OF LOWER COURT AND
DIRECT DISMISSAL OF BILL OF COMPLAINT.**

The appellant State's Attorneys being the sole surviving appellants in said cause respectfully move the Court to vacate the decree of the lower court and direct the District Court for the Northern District of Florida to dismiss the bill of complaint, heretofore filed in this cause, for want of the necessary party, and for grounds of this motion, movants show as follows:

1. The death of the said Cary D. Landis May 10, 1938, occurred subsequent to the entry of order allowing appeal to this Court April 25, 1938; thereafter on May 31, 1938, the appellant State's Attorneys as defendants in the court

below filed in the District Court suggestion of the death of said Landis and contemporaneously therewith filed their motion to dismiss suit for want of proper parties and on the ground that the question involved in the suit had become moot. A certified copy of said suggestion of death and motion are hereto attached, marked Exhibits "A" and "B" respectively, made part hereof.

2. Thereafter on July 11, 1938, the appellees as plaintiffs in the court below filed in said District Court their motion for leave to file supplemental bill and with said motion tendered a proposed supplemental bill wherein they sought to implead as a party defendant George Couper Gibbs, the successor in office as Attorney General of the State of Florida. A certified copy of said motion is hereto attached, marked Exhibit "C", made part hereof.

3. Thereafter on July 11, 1938 the said George Couper Gibbs filed in said District Court his special appearance and objections to being made party defendant to said cause, certified copy of which with its supporting affidavit is hereto attached, marked Exhibit "D", made part hereof; and on the same day the defendant State's Attorneys filed their objections to the plaintiffs' motion for leave to file supplemental bill, a certified copy of which is hereto attached, marked Exhibit "E", made part hereof.

4. Thereupon on the date last mentioned, July 11, 1938, said cause came on to be heard before the special statutory three-judge court at Pensacola, Florida, upon the several motions, the special appearance and objections hereinabove referred to and was argued by counsel whereupon said court on said date entered its order denying the motion of the defendant State's Attorneys to dismiss the cause, and denying the motion of the plaintiffs for leave to file supplemental bill impleading George Couper Gibbs as party defendant in the place of said Cary D. Landis, deceased. A certified

copy of said order is hereto attached, marked Exhibit "F", made part hereof.

5. That under Section 9 of the Florida statute attacked by the bill of complaint in this case, viz., Chapter 17807, Laws of Florida, 1937, it is specifically provided that all proceedings, civil or criminal, for the enforcement or violation of said statute are committed to the exclusive direction of the Attorney General of the State of Florida and that without such direction from him none of the State's Attorneys is empowered to take any action whatever. Therefore, the State's Attorneys are not necessary parties and the Attorney General is the only necessary party to this action. A copy of said statute is hereto attached, marked Exhibit "G", made part hereof.

6. The District Court correctly decided that the said George Couper Gibbs could not be impleaded as a party defendant in the face of his objections and supporting affidavit, (*Ex parte La Prade*, 289 U. S. 444.) In the absence of the official occupying the office of Attorney General of the State of Florida the controversy therefore became moot and the suit should be dismissed. (*Warner Stock Company v. Smith*, 165 U. S. 28; *Chandler v. Dix et al.*, 194 U. S. 590; *Pullman Company v. Croom*, 213 U. S. 571; *Pullman Company v. Knott*, 243 U. S. 447; *Bernardin v. Butterworth*, 169 U. S. 600.)

7. The defendants have appealed from the order of the special statutory three-judge court granting a temporary injunction restraining the enforcement of the above mentioned statute and have lodged the transcript of record on said appeal in this Court. This record is very voluminous and it will cost approximately \$2,000.00 to have same printed, in addition to the cost of printing briefs and traveling expenses of counsel incurred in attending Court for the argument of the appeal.

8. By granting this motion not only will the above described expense be saved to the State of Florida, but this Court will conserve its own time and effort which in that event need not be devoted to the consideration of a case which has become moot under the authorities above cited.

TYRUS A. NORWOOD,
Assistant Attorney General
of the State of Florida,
LUCIEN H. BOGGS,
ANDREW W. BENNETT,
Attorneys for Defendant
State's Attorneys.

EXHIBIT A.

IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA,
GAINESVILLE DIVISION.

Equity. No. 12.

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, etc., *et al.*,
Complainants,

v.

CARY D. LANDIS, Individually and as Attorney General of
the State of Florida, *et al.*, Defendants.

SUGGESTION OF DEATH.

The defendant State's Attorneys in the above entitled
cause, being the sole surviving defendants therein, respect-
fully suggest to the Court the death on May 10, 1938, of their
former co-defendant Cary D. Landis, who was named party
defendant in said action, individually and as Attorney Gen-
eral of the State of Florida.

(S.)

TYRUS A. NORWOOD,
Assistant Attorney General,

(S.)

ANDREW W. BENNETT,

(S.)

LUCIEN H. BOGGS,

Solicitors for Defendant

State's Attorneys.

EXHIBIT B.**IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA,
GAINESVILLE DIVISION.**

Equity. No. 12.

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, *et al.*,
Complainants,

v.

CARY D. LANDIS, Individually and as Attorney General of
the State of Florida, *et al.*, Defendants.

MOTION TO DISMISS SUIT.

The defendant State's Attorneys, being the sole surviving defendants in said cause, move the Court for an order dismissing said suit for want of proper parties upon the following grounds:

1. The defendant Cary D. Landis, named as party defendant to said cause, individually and as Attorney General of the State of Florida, died May 10, 1938, as shown by suggestion of death filed co-temporaneously herewith. While said defendant Cary D. Landis was named as defendant in the bill of complaint in said cause, both individually and officially as Attorney General of the State of Florida, yet in fact and in law, this suit was actually brought against him only individually, and, being based solely upon alleged wrongful acts done or threatened to be done under color of his office, said suit abated as to him upon his death.

2. Under the State statute attacked by this suit, viz., Chapter 17807, Laws of Florida, 1937, the power of enforcing *vel non*, said statute both civilly and criminally is lodged specifically and solely with the Attorney General of said State, said statute providing that the State's Attorneys shall proceed in civil and criminal prosecutions alike only under the direction of the Attorney General; the surviving

defendants have not been directed or authorized by the present incumbent in the office of Attorney General to bring any such actions, civil or criminal, and being powerless to act in said matters without the direction of the Attorney General, the controversy involved in said suit has become moot.

3. No attempt has been made by the plaintiffs to implead the successor in office of the said Cary D. Landis, or to bring him in as a party defendant; nor could such proceedings hereafter successfully be invoked by the plaintiffs.

4. In the absence of the person occupying the office of the Attorney General of the State of Florida, no final decree could effectively be rendered in this cause.

5. The surviving defendants were not and are not necessary parties to this suit, since an injunction of this Court restraining the person occupying the office of Attorney General from bringing, directing or authorizing any such suits civil or criminal would have fully protected the plaintiffs against the alleged wrongs, even without the presence as parties defendant of the several State's Attorneys of the State of Florida. The relief sought against the surviving defendants by the bill of complaint herein was incidental only, by way of restraining them from executing the orders of their official head.

And request is hereby made of the Presiding Judge of this Court to convene three judges to hear this motion for the dismissal of said cause as provided by Section 380, Title 28 of the U. S. Code as amended.

Dated this 31 day of May, 1938.

(S.)

TYRUS A. NORWOOD,
Assistant Attorney General;

(S.)

ANDREW W. BENNETT,

(S.)

LUCIEN H. BOGGS,

Solicitors for Defendant

State's Attorneys.

EXHIBIT C.

IN THE UNITED STATES DISTRICT COURT, NORTH-
ERN DISTRICT OF FLORIDA, GAINESVILLE DI-
VISION.

Equity. No. 12.

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, *et al.*,
Complainants,

v.

CARY D. LANDIS, Individually and as Attorney General of
the State of Florida, *et al.*, Defendants.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BILL.

Now come the complainants in the above entitled cause,
by their undersigned counsel, and move the Court for leave
to file and serve a supplemental bill of complaint, with
prayer for supplemental subpoena and other relief, in the
above entitled cause, and say:

1. On the 7th day of February, 1938, complainants filed
their bill of complaint in this Court against the defendants,
Cary D. Landis, individually and as Attorney General of the
State of Florida, and the various State Attorneys for the
respective Judicial Circuits in the State of Florida, for an
injunction, interlocutory and permanent, enjoining the de-
fendants from enforcing Senate Bill No. 679, of the Acts
of Florida for 1937, and for the purpose of having said
statute declared unconstitutional, null and void.

2. Thereafter, on the 3rd day of March, 1938, this cause
came on for hearing before a Statutory Three Judge Court,
upon the application of the Complainants for an interlocu-
tory injunction, and the motion of the defendants to dismiss
the bill of complaint. On the 5th day of April, 1938, the
Court entered an order granting the application for an inter-
locutory injunction, enjoining the defendants from enforce-
ing said statute, and denying the motion of the defendants
to dismiss the bill of complaint.

3. On the 25th day of April, 1938; the defendants petitioned for the allowance of an appeal from said order of April 5th, 1938, to the Supreme Court of the United States, which said appeal was allowed, and is now pending.

4. Thereafter, on the 10th day of May, 1938, the defendant, Cary D. Landis, who was named a party defendant in said action, individually and as Attorney General of the State of Florida, departed this life, and on the 16th day of May 1938, George Couper Gibbs became, and is now, the duly appointed, qualified and acting Attorney General of the State of Florida.

5. Said George Couper Gibbs, individually, and as Attorney General of the State of Florida, has adopted the action of his predecessor in office, the said Cary D. Landis, in threatening to enforce said State Statute, alleged to be in violation of the Constitution of the United States. In order to protect the constitutional rights of the complainants from invasion by said George Couper Gibbs, it is necessary that they file a supplemental bill of complaint, adding said George Couper Gibbs as a party defendant to this suit, with allegations concerning his actions with reference to said State Statute, and seeking the same relief against him as was sought in the original bill of complaint against said Cary D. Landis and the other defendants, and seeking the issuance of a supplemental subpoena, directed to said George Couper Gibbs; that by reason of the foregoing facts there is a substantial need for continuing and maintaining this suit against said George Couper Gibbs, individually and as Attorney General of the State of Florida, and against the defendant States Attorneys.

Wherefore, the complainants move the Court for the entry of an order granting leave and consent to them to file herein a supplemental bill of complaint in the form and for the purpose above alleged, and to serve the same.

(Sgd.) WIDEMAN, WARDLAW & CALDWELL,
Solicitors for Complainants.

MANLEY P. CALDWELL,
Of Counsel.

EXHIBIT D.

IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA,
GAINESVILLE DIVISION.

Equity. No. 12.

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, *et al.*,
Complainants,

v.

CARY D. LANDIS, Individually and as Attorney General of
the State of Florida, *et al.*, Defendants.

SPECIAL APPEARANCE AND OBJECTIONS OF GEORGE COUPER
GIBBS TO BEING MADE PARTY DEFENDANT TO SAID CAUSE.

George Couper Gibbs, appearing specially and solely for
the purpose of presenting these objections, hereby objects
to each and every of the following proceedings proposed on
the part of the plaintiffs in this cause:

1. To the granting of their motion for leave to file supplemental bill of complaint naming him as a party defendant to said cause.
2. To the issuance of subpoena against him under said proposed supplemental bill.
3. To the granting of the proposed temporary or permanent injunction against him.

For grounds of this motion, the objector shows the following:

A. The original bill of complaint having been removed by appeal to the U. S. Supreme Court, this Court is without power to allow the same to be supplemented.

B. The original bill of complaint in this cause was brought against the late Cary D. Landis, deceased, as principal and primary defendant; and, the cause of action, if

any, stated in the original bill of complaint has now become moot by reason of the death of the aforesaid Cary D. Landis.

C. Said suit is now abated leaving no predicate whereon can be founded the right to file a supplemental bill.

D. It has not been shown that there is a substantial need for continuing or maintaining said suit in view of the death of the said Cary D. Landis.

E. No proper or sufficient showing is made that this objector adopts or continues, or threatens to adopt or continue the alleged action of his predecessor in enforcing the Florida statute complained of.

F. The allegations of the proposed supplemental bill and its supporting affidavit with respect to the alleged actions and conduct of this objector in regard to the enforcement of the said State statute are vague and lacking in specification as to the time, place, and manner in which it is claimed this objector is threatening to enforce the said State statute; and said allegations are shown to be groundless and untrue in fact by the affidavit of the objector hereto attached marked Exhibit "A", made part hereof.

G. The method provided by U. S. Code, Title 28, Sec. 780, is exclusive, and has not been followed in that the proposed supplemental bill does not seek to substitute this objector as a party defendant in the place of said Cary D. Landis, deceased.

H. Even if the instant motions of the plaintiffs were construed as a motion to substitute the objector as a defendant in place of said Cary D. Landis, deceased, such motion could be properly lodged only in the Supreme Court of the United States, in which Court the appeal of said Landis was pending at the time of his death.

I. The sole method provided for the proposed bringing in of the objector as a party defendant to this suit is afforded by U. S. Code Title 28, Sec. 780; insofar as said statute attempts to provide for a substitution of the objector for his predecessor in office in this cause brought to restrain the enforcement of a state statute, said federal

statute operates to cut off the right of the objector to defend his cause and to bind him by the pleadings and proceedings theretofore taken by his predecessor, not in privacy with him, and is therefore in contravention of the Fifth Amendment to the Constitution of the United States, in depriving the objector of his property without due process of law; and in depriving him of his day in Court.

(Signed)

GEORGE COUPER GIBBS,
In Propria Persona.

STATE OF FLORIDA,
County of Leon, ss:

Affidavit of George Couper Gibbs in Support of Objections.

Before me personally appeared George Couper Gibbs who being first duly sworn, says:

I make this affidavit in support of the objections filed by me to being made party defendant in the above entitled cause, and in so doing I appear specially and solely for the purpose of supporting the said objections.

I am familiar with the proposed supplemental bill of complaint tendered by the plaintiffs in this cause, and it is true as therein alleged that I am the Attorney General of the State of Florida, and that I succeeded in such office the late Cary D. Landis, deceased, formerly a defendant in said cause.

I am without knowledge whether it is true as alleged in the original bill of complaint that the said Cary D. Landis was threatening or ever threatened to enforce the said State statute either against these complainants or others similarly situated, whether by enforcing the penal or confiscatory provisions of said statute or otherwise; although, based upon an investigation of the affairs of the office of my said predecessor, I am informed and believe that all such allegations are unfounded and untrue. However this may be, I assert most positively and without qualification that I have never threatened to enforce said State statute or any provision thereof at any time, either against the plaintiffs in said suit or any other persons whomsoever, either upon the contingencies referred to in said supple-

mental bill or otherwise; nor am I now making such threats or any of them; nor have I directed or authorized any of the parties defendant to said cause to take or to threaten to take any such action against any person, firm, association, or corporation whomsoever.

No proceeding is now pending in any court looking to the enforcement of said statute under any direction or authority from me; and without such direction or authority no such proceeding may be brought.

(Signed)

GEORGE COUPER GIBBS.

Sworn to and subscribed before me this 9th day of July.

EVELYN DAVIS,

[SEAL.]

Notary Public,

State of Florida at Large.

My Commission Expires Mar. 7, 1939.

EXHIBIT E.

IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA,
GAINESVILLE DIVISION.

Equity. No. 12.

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, *et al.*,
Complainants,

v.

CARY D. LANDIS, Individually and as Attorney General of
the State of Florida, *et al.*, Defendants.

OBJECTIONS OF DEFENDANT STATE'S ATTORNEYS TO THE PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL BILL.

The defendant State's Attorneys, without waiving or impairing in any manner the motion to dismiss this suit heretofore filed by them or the position asserted by them that this suit is now abated by reason of the death of former

defendant, Cary D. Landis, and incapable of revival, object to the granting of plaintiffs' motion for leave to file supplemental bill upon the following grounds:

1. Said suit is now abated, leaving no predicate whereon can be founded the right to file a supplemental bill.

2. By reason of the matters set forth in the suggestion of death and motion to dismiss said suit for want of necessary parties heretofore filed by these defendants, no suit is now pending in this Court.

3. A supplemental bill is not a proper or permissible method of bringing in as party defendant the successor in office to the deceased defendant Cary D. Landis.

4. Even if said suit were subject to revival as against the successor in office of said Cary D. Landis, deceased, the method provided by U. S. Code Title 28, Sec. 780 is exclusive, and has not been followed.

5. Even if said suit were subject to revival as against the successor in office of said Cary D. Landis, deceased, the original bill of complaint is now removed by appeal to the United States Supreme Court, and this Court is without power to allow the same to be supplemented.

TYRUS A. NORWOOD,
Assistant Attorney General;
 ANDREW BENNETT,
 LUCIEN H. BOGGS,
Solicitors for Defendant
State's Attorneys.

EXHIBIT F.

IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA,
GAINESVILLE DIVISION.

Equity. No. 12.

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, *et al.*,
Complainants.

vs.

CARY D. LANDIS, Individually and as Attorney General of
the State of Florida, *et al.*, Defendants.

This cause came on for hearing in Pensacola, Florida, on
July 11th, 1938, before Honorable Rufus E. Foster, Circuit
Judge, Honorable Louie W. Strum and Honorable A. V.
Long, District Judges, upon motion of the defendants State
Attorneys of the State of Florida to dismiss the cause, and
upon motion of the plaintiffs to file supplemental bill, which
motions were argued by counsel for the respective parties.

It is the opinion of the Court that the State Attorneys
filing the motion to dismiss the cause are necessary parties
defendant to the suit and, therefore, the cause did not abate
as to them upon the death of said Honorable Cary D. Landis.
Said motion to dismiss is denied.

It is also the opinion of the Court that the supplemental
bill, for which leave to file is asked, in effect substitutes Hon-
orable George Couper Gibbs as a party defendant in the
place of Honorable Cary D. Landis, deceased. On authority
of *ex parte* La Prade, 289 U. S. 444, said motion is denied.

(Sgd.)

RUFUS E. FOSTER,

United States Circuit Judge,

(Sgd.)

LOUIE W. STRUM,

United States District Judge,

(Sgd.)

A. V. LONG,

United States District Judge.

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE
NORTHERN DISTRICT OF FLORIDA.

I, William Logan Hill, Clerk of the above styled Court,
do hereby certify that the foregoing:

Suggestion of Death, filed May 10, 1938;

Motion to Dismiss Suit, filed May 10, 1938;

Motion for Leave to File Supplemental Bill, filed July 11,
1938;

Special Appearance and Objections of George Couper
Gibbs to being made Party Defendant to said Cause, filed
July 11, 1938;

Objections of Defendant State's Attorneys to the Plain-
tiffs' Motion for Leave to File Supplemental Bill, filed July
11, 1938;

Order of the Court, dated July 11, 1938,

are true and correct copies of the respective original plead-
ings and order hereinabove described, and that the originals
hereof are on file in said Court.

In Witness Whereof, I have hereunto set my hand and
Seal of this Court this 8th day of August, 1938.

WILLIAM LOGAN HILL,

[SEAL.]

*Clerk United States District Court
in and for the Northern District of Florida.*

EXHIBIT G.

Senate Bill No. 679.

AN ACT declaring to be an unlawful monopoly and its pur-
poses to be in restraint of trade; any combination of per-
sons, firms or corporations which determine the amount
of money to be paid to it or to its members for the privi-
lege of rendering privately or publicly for profit copy-
righted vocal or instrumental musical compositions, when
such combination is composed of a substantial number of
all musical composers, copyright owners, or their heirs,
successors or assigns; to require each composer and each
author of vocal or instrumental copyrighted musical com-

positions to act independently of any combination as herein declared unlawful in determining license fees and other rights; to require the author, composer and publisher to specify upon the musical composition the selling price thereof, including public performance for profit; to declare that any purchaser thereof, who pays such price therefor shall have the right to render such music privately or publicly for profit; to declare all existing agreements requiring license fees or other exactions for the privilege of rendering copyrighted musical compositions publicly for profit, made with any combination, firm or corporation herein declared unlawful, to be void and non-enforceable; to permit the present owners, possessors and users of such copyrighted music to render the same privately or publicly for profit without interference by such unlawful combination; to provide for the protection of theatres, moving picture houses, hotels, places for education and public performance or amusement, radio broadcasting and radio receiving and radio re-broadcasting stations affiliated with other persons, firms or corporations outside of the State of Florida, against the collection of license fees or other exactions by such out of the State affiliates for or on account of any combination herein declared unlawful; to provide all liability for any infringement of copyrighted musical compositions conveyed by radio broadcasting, air, wire, electrical transcription or sound producing apparatus, or by personal performance coming outside of the State of Florida and used herein to rest exclusively on the out of the State person, firm or corporation originally sending the same into this State for use herein; to provide penalties for the violation hereof; to empower the State's Attorney, under the direction of the Attorney General, upon the complaint of any party aggrieved by any violation hereof to proceed to enforce the penalties hereof against such combination and any of its members, agents or representatives; to empower any party aggrieved by any violation hereof to proceed in his own right hereunder; to define the legal procedure required to carry out the provisions herein; to provide for the recovery of costs, expenses and attorney's

fees; to provide that the terms of this Act shall be cumulative; to provide that any part of this Act declared illegal shall not affect the validity of the remaining parts hereof.

Be it Enacted by the Legislature of the State of Florida:

SECTION 1. It shall be unlawful for authors, composers, publishers; owners, or their heirs, successors or assigns, of copyrighted vocal or instrumental musical compositions to form any society, association, partnership, corporation or other group or entity, called herein a combination, when the members therein constitute a substantial number of the persons, firms or corporations within the United States who own or control copyrighted vocal or instrumental musical compositions, and when one of the objects of such combination is the determination and fixation of license fees or other exactions required by such combination for itself or its members or other interested parties for any use or rendition of copyrighted vocal or instrumental musical compositions for private or public performance for profit; and the collection or attempted collection of such license fee or other exaction so fixed and determined by any member, agent, or representative of such combination herein declared unlawful, from any person, firm or corporation within this State, including theatres, radio, receiving, radio broadcasting and radio re-broadcasting stations, moving picture houses, hotels, restaurants, clubs, dance halls, recreation rooms, pavilions, colleges, universities, churches, or any one who uses music in the conduct of his business, or the officers, directors, proprietors, managers, owners or representatives thereof, who render or cause to be rendered or permit to be rendered such copyrighted vocal or instrumental musical compositions privately or publicly for profit through personal performance, or through radio or any instrumentality or sound producing apparatus, shall be and the same are hereby declared unlawful and illegal; and such license fees or other exactions by such combination or its agents, members, or interested parties shall not be collected in any Court within the boundaries of this State; and such collection or attempted collection of such license fee or other exaction by such combination or its agents, members or interested parties, shall be a sepa-

rate offense hereunder; and any such combination of authors, composers or publishers, or their heirs, successors or assigns, as herein defined, is hereby declared to be an unlawful monopoly in this State; and the fixing of prices or exactions for use or rendition of copyrighted musical compositions and the collecting or attempting to collect such license fees or other exactions by it or for its members or other interested parties, is hereby declared illegal and in restraint of trade; and such collection or attempted collection is declared to be an intra-state transaction within this State, and shall be subject to the terms and penalties of this Act.

SECTION 2-A. All authors, composers or publishers, and their heirs, successors or assigns, shall specify or cause to be specified legibly upon the musical compositions, in whatever form the same may be published, printed, manufactured or otherwise prepared for use or rendition, the selling price thereof so arrived at and determined for all uses and purposes; and when any purchaser or user acquires the same within this State and pays the selling price so specified thereon to the seller or publisher of such musical composition, then said purchaser or user may use or render, or cause or permit to be used or rendered, the said copyrighted musical composition by persons individually or with other performers, actors and singers, or by an individual instrument player, or by orchestras and bands, or over or through or by means of radio loud speakers, radio receiving, radio broadcasting and radio re-broadcasting stations, electrical transcriptions, musical records, sound apparatus or otherwise, and the same may be so rendered either privately or publicly for profit without further license fees or other exactions; and such copyrighted owner or proprietor in such event shall be deemed to have received full compensation for the rendition and all uses of such musical compositions for private and public performance for profit.

SECTION 2-B. In the event any author, composer or publisher, or any of his heirs, successors or assigns, fails or refuses to affix on the musical composition the selling price, and collect the same, for private or public performances for profit, at the time and in the manner specified in this Act, then any person, firm or corporation in this State who may

have purchased and paid for such copyrighted musical composition, may use the same for private or public performance for profit without further license fee or other exaction; and such person, firm or corporation so using or rendering the same shall be free from any and all liability in any infringement or injunction suit, or in any action to collect damages instituted by such copyright proprietor or owner in any Court within this State.

SECTION 2-C. Nothing in this Section or this Act shall be construed to give to any purchaser of copyrighted musical compositions, as herein provided, the right to resell, copy, print, publish or vend the same; nor to prevent authors and composers from determining and fixing the price to be charged for the use or rendition of their copyrighted musical compositions, provided such authors and composers act independently of any such combination as in Section 1 hereof declared unlawful.

SECTION 3. All existing contracts, agreements or licenses now existing within this State, made by any person, firm or corporation with any combination declared unlawful under Section 1 hereof, are hereby declared void and non-enforceable in any Court within this State, and are hereby declared to have been entered into as intra-state transactions with such unlawful combinations and in restraint of trade. And all such contracts, agreements, licenses and the attempted enforcement thereof may be enjoined by any person, firm or corporation sought to be bound thereby; and any agent, member or representative of such unlawful combination enforcing or attempting to enforce the terms of such existing contract, agreement or license, shall be guilty of a violation of the terms of this Act; and for any collection or attempted collection of moneys set out in the illegal contract, agreement, or license, shall be subject to the penalties of this Act.

***SECTION 4-A.** Any person, firm or corporation who owns, leases, operates or manages a radio broadcasting, radio receiving or radio re-broadcasting station within this State, shall be and is hereby authorized to receive, broadcast and re-broadcast copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or controlled by

any such combination declared unlawful by Section 1 hereof, without the payment, to such combination or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and non-collectible by the terms hereof.

SECTION 4-B. When such radio receiving, radio broadcasting or radio re-broadcasting station is affiliated with any other person, firm or corporation owning, leasing or operating a radio broadcasting station outside this State from whence copyrighted vocal or instrumental musical compositions originate or emanate, and which are received, used, broadcast or re-broadcast within this State, in accordance with the terms of any affiliation agreement or other contract, then such person, firm, or corporation owning, leasing, operating or managing a radio broadcasting station outside this State, shall be and is hereby prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any person, firm or corporation who owns, leases, operates or manages a radio broadcasting, radio receiving or radio re-broadcasting station within this State, any herein declared non-collectible license fee or other exaction; for the purpose of paying or repaying the same outside this State to any combination, or its members, stockholders or other interested parties, declared unlawful by Section 1 hereof; and any such person, firm or corporation, collecting or attempting to collect such license fee or other exaction against such persons, firms or corporations within this State for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and non-collectible, shall be deemed guilty of a violation of the provisions of this Act; and such person, firm or corporation from without this State is hereby declared to be an agent and representative of such combination as declared illegal and unlawful by Section 1 hereof, and shall be subject to all the penalties hereof.

SECTION 5-A. Any person, firm or corporation who owns, operates or manages any theatre or theatres, moving picture house or houses, or a similar place or places for amusement and public performance within this State, shall be and is hereby authorized to receive, use and render, or cause to be received, used and rendered, by the personal per-

formance of artists, singers, musicians, orchestras, bands, or actors, or by loud speakers, radio, sound production or reproduction apparatus or instrumentalities, or electrical transcriptions, or by any other means of rendition whatever, copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or controlled by any such combination declared unlawful by Section 1 hereof, without the payment, to such combination, or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and non-collectible by the terms of this Act.

SECTION 5-B. When such theatre or theatres, moving picture house or houses, or other places for amusement, or performance is or are affiliated or under contract in any manner whatsoever with any other person firm or corporation furnishing in any form or manner copyrighted musical compositions from outside this State, or supplying such persons, firms or corporations in this State with radio broadcasts or electrical transcriptions, sound production instrumentalities or apparatus, or artists, performers, musicians, singers, players, orchestras, bands or other artists or talent, wherein or whereby copyrighted vocal or instrumental musical compositions are privately or publicly rendered for profit, then such person, firm or corporation outside this State, shall be and is hereby prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any such person, firm or corporation who owns, leases, operates or manages such theatre or theatres, moving picture house or houses, or other places for amusement or public performance within this State, any license fee or other exaction for the purpose of paying or repaying the same to any such combination declared unlawful by Section 1 hereof for the use, rendition or performance of such copyrighted musical compositions; and any such person, firm or corporation, collecting or attempting to collect, such license fee or other exaction from outside this State against such persons, firms or corporations within this State for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and non-collectible, shall be deemed guilty

of a violation of the provisions of this Act; and such person, firm or corporation from without this State is hereby declared to be an agent and representative of such combination declared illegal and unlawful by Section 1 hereof, and shall be subject to all the penalties hereof.

SECTION 6. Whenever any person, firm or corporation who owns, leases, operates or manages a radio receiving, radio broadcasting or radio re-broadcasting station, or theatre or moving picture house or similar place for amusement and public performance, or for the rendition in any manner of copyrighted vocal or instrumental musical compositions, and which radio stations and theatres, and other persons, firms or corporations aforementioned, are affiliated with persons, firms or corporations outside this State from whence said copyrighted vocal or instrumental musical compositions originally emanate either by radio, sound production instrumentalities or apparatus, or by furnishing a person or persons to play or sing such music within this State, then the responsibility and liability for the use of all copyrighted vocal or instrumental musical compositions thus emanating from outside this State shall rest with and be upon such affiliated person, firm or corporation from outside this State who originates the broadcasting or the performance or the sound production instrumentality or apparatus, or sends the personal singers or performers into this State; and the owner or proprietor of the copyrighted vocal or instrumental musical compositions shall be and is hereby prohibited from suing for infringement, loss or damage within the boundaries of this State, for the use or rendition of such copyrighted vocal or instrumental musical compositions because such persons, firms or corporations used, rendered or performed the same within the State; and said copyright owner or proprietor shall make his collection therefor from the person, firm or corporation from outside this State from whence the use of said copyrighted vocal or instrumental musical compositions originally emanated; the use or rendition by radio broadcast, radio re-broadcast or sound producing instrumentalities or apparatus, or electrical transcription, or by the personal performance of singers, players and musicians sent into this State

or otherwise, of such copyrighted musical compositions within this State in the manner set forth in this section, shall be considered, for the purpose of this Act, as intrastate business of this State and subject to the control, regulation and prohibitions set forth in this Act notwithstanding that such copyrighted musical compositions originated or emanated from without this State.

SECTION 7-A. Any person, firm or corporation within this State who shall act as the representative of any combination herein declared unlawful as defined in Section 1 hereof, shall, for the purpose of this Act, be deemed an official representative and agent of such unlawful combination and shall be construed to be doing business within this State, and service of any process against such combination may be had upon such representative or the agent of such representative as herein defined; and when so served, such process shall have the same legal effect as if served upon a duly elected officer or managing agent or other official representative upon whom service might otherwise be made upon such combination within this State.

SECTION 7-B. Furthermore, any person or persons who negotiates for, or collects, or attempts to collect license fees or other exactions, or who acts as the representative or agent for any combination declared unlawful in Section 1 hereof, shall, for the purpose of this Act, be considered as a part of said unlawful combination; and such person, firm, or corporation shall be subject to all the penalties in this Act provided for violations thereof.

SECTION 8. Any combination as in Section 1 hereof declared to be unlawful, and any other person, firm or corporation acting or attempting to act within this State in violation of the terms of this Act, or any representative or agent of any person, firm or corporation who aids or attempts to aid any such unlawful combination as defined in Section 1 hereof, in the violation of any of the terms of this Act, in any manner whatsoever, shall be punished by a fine of not less than \$50.00 or more than \$5,000.00, and by imprisonment in the penitentiary not less than one or more than ten years, or by either such fine or imprisonment.

SECTION 9. The several Circuit Courts of this State shall have jurisdiction to prevent and restrain violations of this Act, and, on the complaint of any party aggrieved because of the violation of any of the terms of this Act anywhere within this State, it shall be the duty of the State's attorneys in their respective circuits, under the direction of the Attorney-General, to institute proceedings, civil or criminal, or both, under the terms hereof, against any combination as defined in Section 1 hereof, and against any of its members, agents or representatives as herein defined, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided, or to dissolve any such combination as declared unlawful by Section 1 hereof. In civil actions such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of have been duly notified of such petition, the Court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the Court may at any time make such temporary restraining order as shall be deemed equitable.

SECTION 10-A. Any person, firm or corporation in this State aggrieved by reason of anything forbidden in this Act may sue therefor in any Circuit Court in the circuit in which the violation or a part thereof took place, to recover any damages assessed as a result of the violation of the terms of this Act, and shall be entitled to recover his or its costs, including reasonable attorney's fees to be fixed by the Court in such action.

SECTION 10-B. In the event of the failure of the State's Attorney and Attorney-General to act promptly, as herein provided, when requested so to do by any aggrieved party, then such party may institute a civil proceeding in his own behalf, or upon behalf of Plaintiff and others similarly situated, as the State's Attorney and the Attorney-General could have instituted under the terms of this Act.

SECTION 11-A. In any proceeding brought under the terms of this Act, any attorney of record for the Plaintiff may file with the Clerk of the Court in which such action is pending,

a petition praying that the defendant or defendants be required to file with the Clerk of said Court exact copies of all documentary evidence, records or data in the possession or under the control of said Defendant or Defendants pertaining to the issues as alleged by the Plaintiff in the cause; and the Circuit Court, upon the presentation to it of such petition, shall determine what part, or all, or any of such evidence shall be produced, and enter an order to that effect. A copy of such order shall be mailed to each Defendant at his, her or its last known address, which shall be deemed sufficient notice and service upon such Defendant or Defendants. Or, the same may be served by mail in the same manner upon the attorney or attorneys of record for the Defendant or Defendants, and this shall be deemed sufficient notice and service upon said Defendant or Defendants.

SECTION 11-B. If said Defendant or Defendants shall fail to file with the Clerk of the Court in which such action is pending said copy of copies of documentary evidence, records or data, and within the time provided in said order, the Court shall adjudge such Defendant or Defendants guilty of contempt and shall assess a fine of \$100.00 against such of the Defendants for each and every day that such Defendant or Defendants fail to comply with said order, and judgment shall be entered accordingly. And the Plaintiff may collect the same against the Defendant or Defendants with interest thereon and costs, including a reasonable attorney's fee. And the Court shall determine when the judgment is rendered what disposition shall be made of the proceeds collected after the payment of costs, and attorney's fees.

SECTION 12. If any section, sub-section, sentence clause or any part of this Act, is for any reason, held or declared to be unconstitutional imperative or void, such holding or invalidity shall not affect the remaining portions of this Act; and it shall be construed to have been the legislative intent to pass this Act without such unconstitutional, inoperative or invalid part therein; and, the remainder of this Act, after the exclusion of such part or parts, shall be held and deemed to be valid as if such excluded parts had not been included herein.

SECTION 13. Nothing in this Act shall be construed as repealing any other law or parts of laws in reference to any of the matters contained in this Act; and the rights and remedies and provisions herein provided shall be and are hereby declared to be cumulative to all other rights, remedies and provisions now provided under the laws of the State of Florida.

SECTION 14. This Act shall become effective immediately upon its becoming a law.

Approved by the Governor June 9, 1937.

Filed in Office Secretary of State June 10, 1937.

(7049)